

FEB 11 2004

DEPT. OF INSURANCE  
BY [Signature]

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

In the Matter of:

**FORTIS INSURANCE COMPANY**, NAIC # 69477,  
Respondent.

) Docket No. 04A-026-INS

) **CONSENT ORDER**  
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Examiners for the Department of Insurance (the "Department") conducted a market conduct examination of Fortis Insurance Company ("FIC"). In the Report of Examination of the Market Conduct Affairs of FIC, the Examiners allege that FIC violated A.R.S. §§20-461, 20-448.01, 20-2106, 20-2110, 20-2304, 20-2307, 20-2310, 20-2535, 20-3102, and A.A.C. R20-6-801, R20-6-1203, and the 1999 Consent Order, Docket No. 99A-139-INS, filed June 30, 1999.

FIC wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

**FINDINGS OF FACT**

1. FIC is authorized to transact life and disability insurance pursuant to a Certificate of Authority issued by the Director.

2. The Examiners were authorized by the Director to conduct a market conduct examination of FIC. The on-site examination covered the time period from October 1, 2001 to September 30, 2002 and was concluded on May 16, 2003. Based on their findings, the Examiners prepared the "Report of Examination of the Market Conduct Affairs of Fortis Insurance Company" dated May 16, 2003.

3. Following a market conduct examination of Time Insurance Company,

1 N.K.A. Fortis Insurance Company, as of May 31, 1994, the Director entered a Consent  
2 Order, Docket No. 99A-139-INS, which was filed on June 30, 1999 (the "1999 Order").

3 Section 1 of the "Order" portion of the 1999 Order stated as follows:

- 4 "1. Time shall cease and desist from: ...  
5 d. using an incorrect form and or failing to use an HIV Consent Form when a HIV test is  
6 performed;  
7 f. failing to fully advise a declined applicant of the reason and/or source of information  
8 resulting in an adverse underwriting decision.  
9 n. failing to advise claimants of the acceptance or denial of claims within 15 working  
10 days"

11 4. The Examiners reviewed all of the forms used by the Company during the  
12 time frame of the examination and found as follows:

13 a. FIC used one form [#C99.100.DEP..ZZ] that stated that an  
14 individual would not have a pre-existing condition exclusion imposed if covered by  
15 creditable coverage within 30 days of birth or 30 days after adoption or placement for  
16 adoption.

17 b. FIC used two enrollment forms [25635 and 26587] that failed to  
18 contain notice that the individual or the individual's authorized representative was  
19 entitled to receive a copy of the authorization.

20 c. FIC used three enrollment forms [27826, 27849, and 27926] that:  
21 i. Failed to contain notice that the individual or the individual's  
22 authorized representative was entitled to receive a copy of the authorization.

23 ii. Failed to specify the correct length of time that the  
24 authorization remains valid.

25 d. FIC used one HIV-related test consent form [95603 Fortis 11/98]  
that was neither filed nor approved by the Director.

e. FIC used an Employer Participation Agreement/Application [23604  
(Rev. 8/97)] in which the Company, instead of the employer, established eligibility



1 requirements for an employee covered under the health benefits plan.

2       5.     The Examiners reviewed the underwriting guidelines used by the  
3 Company during the time frame of the examination and found as follows:

4             a.     FIC imposed eligibility criterion of full-time employment status for  
5 small groups.

6             b.     FIC failed to offer coverage to one small group based on the fact  
7 that that the employer had not been in business for at least six months.

8       6.     The Examiners reviewed 449 individually underwritten policy files  
9 processed by the Company during the time frame of the examination and found that  
10 FIC failed to provide a Summary of Rights to 35 applicants.

11       7.     The Examiners reviewed 10 of 10 informal reconsiderations and 2 of 2  
12 formal appeals processed by the Company during the time frame of the examination  
13 and found as follows:

14             a.     FIC failed to mail a written acknowledgement to the member and  
15 the member's treating provider within five business days after the utilization review  
16 agent receives the request for informal reconsideration in two appeals.

17             b.     FIC failed to mail to the member and the member's treating  
18 provider within 30 days of receipt of the request for reconsideration a notice of the  
19 utilization review agent's decision and the criteria used and the clinical reasons for that  
20 decision in six appeals.

21       8.     The Examiners reviewed 110 association provider paid claims, 110  
22 association provider denied claims, 110 small group provider paid claims, 109 small  
23 group provider denied claims, 110 individual provider paid claims, and 110 individual  
24 provider denied claims processed by the Company during the time frame of the  
25 examination and found that FIC failed to approve or deny 45 clean claims within 30

1 days of receipt or within the time period specified in the contract.

2 9. The Examiners reviewed 55 association insured paid claims, 55  
3 association insured denied claims, 55 small group insured paid claims, 70 small group  
4 insured denied claims, 54 individual insured paid claims, and 55 individual insured  
5 denied claims processed by the Company during the time frame of the examination  
6 and found as follows FIC failed to accept or deny 21 claims within 15 working days of  
7 receipt of an acceptable proof of loss.

8 **CONCLUSIONS OF LAW.**

9 1. FIC violated A.R.S §20-2310(E)(6) and (7) by using a 30-day instead of a  
10 31-day standard for the exclusion of a pre-existing condition for a newborn or adopted  
11 child.

12 2. FIC violated A.R.S §20-2106(9) by failing to include in its authorization  
13 notice that the individual or the individual's authorized representative is entitled to  
14 receive a copy of the authorization.

15 3. FIC violated A.R.S §20-2106(7)(a) by failing to include in its authorization  
16 notice the correct length of time that the authorization remains valid.

17 4. FIC violated A.R.S §20-448.01(B), A.A.C. R20-6-1203(C) and the 1999  
18 Order by obtaining written consent for an HIV-related test on a form that was not filed  
19 nor approved by the Director.

20 5. FIC violated A.R.S. § 20-2307(A) by establishing eligibility requirements  
21 for employees who would be covered under the health benefits plan.

22 6. FIC violated A.R.S. § 20-2304(A) by declining or failing to offer coverage  
23 to small employer groups that failed to met the eligibility requirements for employees  
24 established by FIC.

25 7. FIC violated A.R.S §20-2110(A) and the 1999 Order by using a non-

1 compliant Summary of Rights letter that was used in the event of an adverse  
2 underwriting decision.

3 8. FIC violated A.R.S §20-2535(B) by failing to mail a written  
4 acknowledgement to the member and the member's treating provider within five  
5 business days after receiving the request for informal reconsideration.

6 9. FIC violated A.R.S §20-2535(D) by failing to mail to the member and the  
7 member's treating provider within 30 days of receipt of the request for reconsideration  
8 a notice of the utilization review agent's decision and the criteria used and the clinical  
9 reasons for that decision.

10 10. FIC violated A.R.S. § 20-3102(A) by failing to approve or deny clean  
11 provider claims within 30 days of receipt of within the time frame specified in the  
12 contract.

13 11. FIC violated A.R.S §20-461(A)(5), A.A.C. R20-6-801(G)(1)(a), and the  
14 1999 Order by failing to accept or deny a claim within 15 working days of receipt of an  
15 acceptable proof of loss.

16 12. Grounds exist for the entry of the following Order in accordance with  
17 A.R.S. §§ 20-220, 20-456 and 20-2117.

18 **ORDER**

19 **IT IS HEREBY ORDERED THAT:**

- 20 1. FIC shall cease and desist from:
- 21 a. Failing to comply with the terms of an existing Order of the
- 22 Director.
- 23 b. Using a non-compliant standard for the exclusion of coverage for a
- 24 newborn or adopted child's pre-existing condition.
- 25 c. Using enrollment forms and applications that fail to state that the



1 individual or the individual's authorized representative is authorized to receive a copy of  
2 the authorization.

3 d. Using application forms that fail to state the correct length of time  
4 that the authorization remains valid.

5 e. Using an HIV-related test consent form that has not been filed nor  
6 approved by the Director.

7 f. Failing to mail a written acknowledgement to the member and the  
8 member's treating provider within five business days after receiving the request for  
9 informal reconsideration.

10 g. Failing to mail a notice of the utilization review agent's decision  
11 and the criteria used and the clinical reasons for that decision, to the member and the  
12 member's treating provider within 30 days of receipt of the request for reconsideration.

13 h. Failing to provide an applicant or insured with a compliant  
14 Summary of Rights in the event of an adverse underwriting decision.

15 i. Establishing eligibility requirements for employees.

16 j. Denying or failing to offer coverage to employer groups who fail to  
17 meet eligibility requirements established by Fortis.

18 k. Failing to approve or deny provider clean claims within 30 days or  
19 within the time frame specified in the contract.

20 l. Failing to accept or deny a claim with 15 working days of receipt of  
21 an acceptable proof of loss.

22 2. Within 90 days of the filed date of this Order, FIC shall submit to the  
23 Arizona Department of Insurance, for approval, evidence that corrections have been  
24 implemented and communicated to the appropriate personnel, regarding the issues  
25 outlined in Paragraph 1 of the Order section of this Consent Order. Evidence of


1 corrective action and communication thereof includes, but is not limited to, memos,  
2 bulletins, E-mails, correspondence, procedures manuals, print screens, and training  
3 materials.

4 3. The Department shall be permitted, through authorized representatives,  
5 to verify that FIC has complied with all provisions of this Order.

6 4. FIC shall pay a civil penalty of \$28,000.00 to the Director for remission to  
7 the State Treasurer for deposit in the State General Fund in accordance with A.R.S. §§  
8 20-220(B) and 20-456. The civil penalty shall be provided to the Market Oversight  
9 Division of the Department prior to the filing of this Order.

10 5. The Report of Examination of the Market Conduct Affairs of Fortis  
11 Insurance Company as of May 16, 2003, including the letter of objection to the Report  
12 of Examination, shall be filed with the Department upon the filing of this Order.

13 DATED at Phoenix, AZ this 11<sup>th</sup> day of February, 2004.

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16 Christina Urias  
17 Director of Insurance  
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**CONSENT TO ORDER**

1. Fortis Insurance Company has reviewed the foregoing Order.

2. Fortis Insurance Company admits the jurisdiction of the Director of Insurance, State of Arizona, admits the foregoing Findings of Fact, and consents to the entry of the Conclusions of Law and Order.

3. Fortis Insurance Company is aware of the right to a hearing, at which it may be represented by counsel, present evidence and cross-examine witnesses. Fortis Insurance Company irrevocably waives the right to such notice and hearing and to any court appeals related to this Order.

4. Fortis Insurance Company states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

5. Fortis Insurance Company acknowledges that the acceptance of this Order by the Director of the Arizona Department of Insurance is solely for the purpose of settling this matter and does not preclude any other agency or officer of this state or its subdivisions or any other person from instituting proceedings, whether civil, criminal, or administrative, as may be appropriate now or in the future.

6. Betsy M. Pelout, Esq., who holds the office of Director, Market Conduct of Fortis Insurance Company, is authorized to enter into this Order for them and on their behalf.

**FORTIS INSURANCE COMPANY**

2/5/2004  
Date

By Betsy M. Pelout



1 COPY of the foregoing mailed/delivered  
2 this 11th day of February , 2004, to:

3 Gerrie Marks

Deputy Director

4 Mary Butterfield

Assistant Director

5 Consumer Affairs Division

6 Paul J. Hogan

Market Oversight Administrator

7 Market Oversight Division

8 Deloris E. Williamson

Assistant Director

Rates & Regulations Division

9 Steve Ferguson

Assistant Director

10 Financial Affairs Division

11 Alan Griffieth

Chief Financial Examiner

12 Alexandra Schafer

Assistant Director

13 Life and Health Division

Terry L. Cooper

14 Fraud Unit Chief

15 DEPARTMENT OF INSURANCE

16 2910 North 44th Street, Suite 210

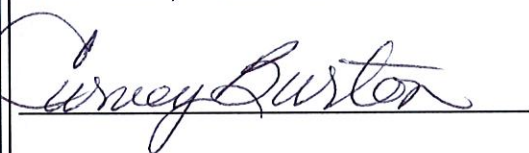
17 Phoenix, AZ 85018

18  
19 Steven E. Johnson, Market Conduct Analyst

Fortis Insurance Company

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